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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,421

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Martin Gustavsson

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EXAMINER

ANDERSON, JERRY W

ART UNIT

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1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/535,421	Applicant(s) GUSTAVSSON, MARTIN	
	Examiner JERRY W. ANDERSON	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/19/2005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-9, 12-16, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haamer, J., U.S. Pat. # 6,437,305, in view of Snyder jr., O.P., Safety of Pasteurized-Chilled Food, found on the internet at <http://www.hi-tm.com/Documents/Chillfd.html>.

a. Haamer discloses:

- i. Flexible container . . . a plastic tray, (line 8, col. 3, '305)
- ii. Covered with a material that can withstand microwave heating, frozen storage, and be tough enough to be suitable for vacuum packing, (Fig. 1B, lines 9-11, col. 3, '305)

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- iii. Placing mussels or other shellfish inside of a container, (lines 61, col. 4, '305)
- iv. Container has a vented opening for the release of overpressure during boiling, (lines 40-41, col. 2, '305)
- v. Excess steam and air exit through vent which seals when heating stops, (lines 43-44, col. 2, '305)
- vi. Venting hole which permits the escape of steam during boiling, but which is sealed immediately as microwave heating cease, (abstract, '305)
- vii. Venting opening . . . is on the upper side of the container, which may be sealed manually or automatically . . . self adhesive tape, (lines 55-59, col. 2, '305)
- viii. The shape and size of the container is determined by the requirement that the temperature at every point inside the container must be raised to boiling point by means of microwaves . . . within 4 minutes, (lines 26-30, col. 3, '305)
- ix. As container cools, condensation of steam, creates a vacuum, causing flexible container to mold itself to the contents, (lines 45-50, col. 2, '305)
- x. The flexible container molds itself to the contents of the container, . . . a vacuum packed food container, (lines 20-23, col. 3, '305)
- xi. Walls are stiff, (fig. 1E, '305)
- xii. Food is 40-60% of container, (Fig. 1A-E, '305)

- xiii. Mussels or other shellfish is in the form of a ready to eat meal,
(lines 23-24, col. 4, '305)
- xiv. Container is a plastic bag, (lines 58-59, col. 4, '305)
- xv. Food can be stored chilled or frozen, (abstract, '305)
- b. Snyder discloses:
 - xvi. Pasteurization of milk, heating to 161° F for 15 seconds. (§ 2, pg 2, Snyder)
 - xvii. Pasteurization of hamburger to 165 ° F for 1.65 seconds (table 2, Snyder)
 - xviii. Package, pasteurize then cool . . . easier to assure the safety of these products . . . the food is cooked to the desired end point for a time that always exceeds pasteurization process. (§ 5, pg 3, Snyder)
- 4. Regarding claim 1, Haamer discloses the claimed invention, including, placing food a tray, (line 61, col. 4, line 8, col. 3, '305) covering the tray with a flexible cover, (Fig. 1B, lines 9-11, col. 3, '305), with a one way valve, closing the valve upon completed cooking, (abstract, lines 40-41, 43-44, col. 2, '305) creating a vacuum in the container, (lines 45-50, col. 2, '305) causing the container to mold itself to the food, (lines 45-50, col. 2, 20-23, col. 3, '305) however, Haamer is silent on pasteurization, the amount of food in the container, the stiff walls and flexible bottom of the tray, and the thickness of the food contents of the package being thinner at the center. Snyder teaches that bringing food, either milk or hamburger to about 165° F for a short time will be sufficient to pasteurized said food. (§ 2, table 2, pg 2, Snyder) Snyder teaches the

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safety of packaging, pasteurization, then cooling, which this procedure uses, as exceeding the requirements of pasteurization. (§ 5, pg 3, Snyder) In Haamer, the food is brought to boiling, (abstract, '305, lines 40-41, col.2, '205) and the total time of heating is less than 4 minutes. (lines 26-30, col. 3, '305) One of ordinary skill in the art at the time of the invention would be aware, in view of Snyder, that Haamer's heating program, bringing the food to about 212 °F in a time of 4 minutes, exceeds the standards for pasteurization. Haamer states that the container is flexible, can be a tray, must mold itself to the food, (line 8, col. 3, 45-50, col. 2, lines 20-23, col. 3, '305) however he is silent as to the stiffness of the walls, using Figures, 1A-1E, it can be seen that the walls are stiff enough to withstand the forces of the covering as it is forced by atmospheric pressure to conform to the food. (Fig. 1, '305) Although Haamer does not discuss the use of this container system on a flowable food, one of ordinary skill in the art at the time of the invention would be aware that the creation of a vacuum in a flexible package with a flexible cover, as shown in Figure 1A-1E, would result in the displacement of the flowable food item away from the center, and towards the walls, thus resulting in a shorter distance between the cover and the bottom of the container. As to the amount of food relative to the size of the container, Haamer does not mention it; however, Figures 1A through 1E show a container that is less than half full, close to the values of the instant application.

5. Haamer is analogous art in that it is concerned with the preparation of food, using microwaves, for human consumption.

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6. It would have been obvious to one of ordinary skill in the art at the time of the invention, to modify the method of preparation of mussels by Hammer, by applying the method to an amorphous food that is deformable under pressure, thus creating a safe economical and rapid method of pasteurization and preservation of foodstuffs for sale to the general public.

7. Regarding claims 2, 3, 9, and 16, Haamer discloses the claimed invention, as discussed above, including that the vent is on the flexible cover. (abstract, Fig. 1A-1E, lines 40-41, col. 2, '305) on the upper side of the container. (lines 34-35, col. 3, '305), and that the vent is an opening with an adhesive flap. (lines 55-59, col. 2, '305)

Haamer is silent as to when the vent is applied, but one of ordinary skill in the art at the time of the invention would be aware that due to the simplicity of the vent, that it could be applied at anytime during the assembly of the container.

8. Regarding claims 4, 13, and 14, Haamer discloses the claimed invention, as discussed above, including that the food is a ready to eat dish. (lines 23-24, col. 4, '305)

9. Regarding claim 5, 12, 19, and 20 Haamer discloses the claimed invention, as discussed above, including that the tray has rigid side walls, at right angles to the bottom of the tray. (Fig. 1E, '305)

10. Regarding claim 6, Haamer discloses the claimed invention, as discussed above, including the use of a flexible container, a tray, (line 8, col. 3, '305) but is silent as to whether the bottom is convex at pressures above ambient. However, one of ordinary skill in the art at the time of the invention would be aware that if the pressure inside the

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container was great enough, the bottom of the container, being flexible, would flex under the pressure and bow outward, that is, be convex.

11. Regarding claims 7 and 15, Haamer discloses the claimed invention, as discussed above, including that the bottom of the tray is flat. (Figs. 1A-1E, '3-5)

12. Regarding claim 8, Haamer discloses the claimed invention, as discussed above, including that the bottom of the tray comprises more than 40% of the total area of the bottom.

13. Claims 10, 17, 11, and 18, are rejected under 35 U.S.C. 103(a) as being unpatentable over Haamer, J., U.S. Pat. # 6,437,305, in view of Matos, J.R., U.S. Pat. # 5,780,824

c. Haamer and Snyder are taken as listed above.

d. Matos discloses:

xix. Upon buildup of sufficient internal heat, steam and /or pressure, the vent hole cover automatically uncovers vent hole . . .self-venting, (lines 36-41, col. 4, '824)

xx. Figs. 2a and 2b depict slit shaped vent hole 25, 26, (lines 41-42, col. 6, '824)

xxi. Vent hole can comprise a single hole, or plural holes . . . the vent hole can be shaped as desired. (lines 43-46, col. 6, '824)

14. Regarding claims 10, 17, 11, and 18, Haamer discloses the claimed invention as discussed above, but lack the use of a slit vent. Matos teaches the use of a slit shaped vent. (Figs. 2a and 2b, lines 41-42, 43-46, col. 6, '824)

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15. Haamer and Matos are analogous art in that both are concerned with the preparation of comestibles for human consumption using microwaves

16. It would have been obvious to use the slit vent of Matos in the container of Haamer, to give the operator a simple method for self venting of steam during the pasteurization process. The use of a slit rather than a hole, previously used by Haamer, would lessen the chance of plugging and would allow a more rapid venting.

17. Regarding claims 11 and 18, Haamer and Matos disclose the claimed invention as discussed above, but lack a sound being produced when the self actuating vent opens. One of ordinary skill in the art at the time of the invention would be aware that steam passing through a vent makes a noise. Steam whistles on locomotives have been used for over 200 years. Steam whistles on tea kettles or tea pots are common everyday occurrences of this phenomenon. The amount of noise produced when the steam passes through a vent with a self adhering flap will depend upon several factors, including the size of the vent, the flap, the pressure at which the adhesive releases, and possibly the orientation of the flap and the vent. However, it would be obvious that there would be a sound produced when the vent released under the steam over pressure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jwa

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794